IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1969 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DINESHKUMAR M VAGHELA

Versus

DIRECTOR

Appearance:

MR PH PATHAK for Petitioner

MR MUKESH R SHAH for Respondent.

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE N.G.NANDI

Date of decision: 11/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

Mr. P.H. Pathak for the petitioner. Mr.

Mukesh R. Shah for the respondent. Rule. Mr. Mukesh R. Shah waives service of the Rule.

2. In the facts and circumstances of the case, we find that this petition deserves to be disposed of at this stage itself and both the sides have also requested for the same.

3. We have heard learned counsel for both the sides at some length. During the course of arguments, Mr. Mukesh Shah appearing for the respondent has submitted that the respondent has no objection if a direction is issued by this Court for deciding the petitioner's application, i.e., M.A.ST No. 780 of 1998 on merits.

4. This petition is directed against an order passed by the Central Administrative Tribunal at Ahmedabad on 4th of August 1999 in M.A.ST. No. 331 of 1999 in O.A. No. 323 of 1993. The O.A. No. 323 of 1993 was dismissed in default for absence of the lawyer and the applicant himself on 21st September 1998. The petitioner had sought the restoration of O.A. No. 323/93 through M.A. ST No. 780 of 1998. This Misc. Application St. No. 780 of 1998 was filed on 16th/23rd October 1998 which remained under objections and on 1st of March 1999 the Tribunal noted the orders passed from 23rd November 1998 onwards with regard to the failure to remove the office objections despite number of adjournments. Therefore, finally on 1.3.1999 the Tribunal noted that neither the applicant nor his counsel had cared to appear in this matter and the registration of his application St. No. 780/1998 was declined. Thereafter, the M.A.ST No. 331 of 1999 was filed on 14th June 1999 and this also remained under objection but on 4.8.1999, Registry was directed to give regular number to it and accordingly regular No. 459 of 1999 was given to it on the same day i.e. 4.8.99. The Central Administrative Tribunal has referred to the reasons given in its order dated 1.3.1999 for refusing the registration on M.A.ST. 780/98. The Tribunal has not found any merit for recalling the earlier orders and accordingly the M.A. ST No. 331 of 1999 regularly numbered as M.A. No. 459/99 was also rejected and it was ordered that the order dated 1.3.1999 stands.

5. Having heard learned counsel for both the parties and having gone through the order, we find that the applicant who was on a low-paid post of Helper has not been able to get a decision on merits, because of the non-appearance of his counsel. Once he had engaged an advocate it was his lawyer's duty to take care of the

objections in the O.A. and he was not expected to be present on each and every date. The poor employee of lower strata should not be deprived of the adjudication of his grievance on merits.

6. In the facts and circumstances of the case, we direct that the petitioner's application, i.e., M.A. ST No. 780 of 1998 may be heard and decided by the Central Administrative Tribunal at Ahmedabad on merits subject to the removal of the objections therein. The petitioner should be allowed to remove the objection within a period of 15 days from the date this order is produced before the Central Administrative Tribunal by the petitioner. It will be the duty of the petitioner himself to remove the office objections now without depending upon his lawyer. The impugned orders dated 4th August 1999 and the order dated 1.3.99 are therefore set aside for ends of justice. This Special Civil Application is hereby disposed of with the observations as aforesaid. Rule is hereby discharged. No order as to costs.

[M.R. Calla, J.]

rmr. [N.G. Nandi, J.]